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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,604	06/26/2003	Cesar A. Gonzalez	VRT0055US	4147
60429	7590	04/20/2006	EXAMINER	
CSA LLP 4807 SPICEWOOD SPRINGS RD. BLDG. 4, SUITE 201 AUSTIN, TX 78759			DOAN, DUC T	
			ART UNIT	PAPER NUMBER
			2188	

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/606,604

Applicant(s)

GONZALEZ, CESAR A.

Examiner

Duc T. Doan

Art Unit

2188

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments in response to the last office action has been fully considered but they are not persuasive. Examiner respectfully traverses Applicant's arguments on pages 2-6 for the following reasons:

1) Applicant's remarks on page 1 attempt to compare the Trimmer's virtual tape library to a primary storage unit. Examiner respectfully disagrees. Trimmer's paragraphs 1,34 clearly describes the virtual tape library VTL (Trimmer's Fig 2: #56) provides a virtual tape library interface that allow an application program such as data protection application program (Trimmer's Fig 2: #54 DPA) to store backup data from primary storage in the computer network (Trimmer's Fig 2: #52 computer network generates data in its own primary memory) to the secondary storage for backup purpose (Trimmer's Fig 2: #60-62 secondary storage devices). In other words, a tape library interface is added to a secondary storage device such as a standard disk arrays (Trimmer's paragraph 1).

Trimmer's paragraphs 2-5,34 and fig 2 further describes functions of DPA and VTL, such as file backup and files, tape library control functions, read and write to disk arrays in the same fashion they read and write to tape. Thus Trimmer clearly describes DPA and VTL provides functions to control a primary and secondary storage unit as claimed.

2) Examiner maintains that DPA and VTL provide a virtual device interface as described in above paragraph. The secondary devices mainly are used for backing up data from a primary memory device. Furthermore, it has been known in the art that the secondary devices are implemented using physical disk or tape devices. Trimmer's paragraph 14 clearly describes the DPA inherently having commands that read or write directly to secondary physical tape devices. In the embodiment wherein the secondary storage devices are physical disks, DPA and VTL provide translated command in order to write to secondary storage devices (physical disks).

3) Applicant's argument about simplified command interface for DPA somehow resulting in DPA would not be able to carry out the tape back up function does not make sense. Applicant then recites the commonly known functions of tape backup such as several times a day etc. Examiner asserts that any tape backup program have a feature to allow users to specify the schedule when the backup will occur. In fact, Trimmer's paragraphs 2-4 clearly describe DTL's functions for providing tape back up that including backup scheduling..


9/14/06

MANO PADMANABHAN
SUPERVISORY PATENT EXAMINER